

**A. R. Barber Masonry and Bricklayers, Masons,  
Marble Masons, Tile Setters, Terrazo Workers,  
Pointers, Cleaners, and Caulkers Local Union  
No. 2 of Florida, I.U.B.A.C. Case 12-CA-15177**

March 15, 1993

**DECISION AND ORDER**

**BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH**

Upon a charge filed by the Bricklayers, Masons, Marble Masons, Tile Setters, Terrazo Workers, Pointers, Cleaners, and Caulkers Local Union No. 2 of Florida, I.U.B.A.C. (the Union) on August 17, 1992, the General Counsel of the National Labor Relations Board issued a complaint on December 29, 1992, against A. R. Barber Masonry, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

Thereafter, on February 12, 1993, the General Counsel filed a Motion to Transfer Proceedings to the National Labor Relations Board and for Summary Judgment. On February 17, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by certified letter dated January 27, 1993, notified the Respondent that unless an answer was received by close of business on February 5, 1993, a Motion for Summary Judgment would be filed.<sup>1</sup>

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

<sup>1</sup> Although the General Counsel's motion indicates that the Respondent refused delivery of the letter, failure to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all times material, Respondent has been owned by Admiral R. Barber, a sole proprietorship, doing business as A. R. Barber Masonry, with its principal place of business located at Jacksonville, Florida, and has been engaged in masonry contracting within Florida. During the 12 months preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations provided services valued in excess of \$50,000 for Charles and Vinzant Construction Company, an enterprise within the State of Alabama which meets a direct standard for assertion of the Board's jurisdiction.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All bricklayers, blocklayers, stonemasons, apprentices, and improvers.

On or about April 30, 1990, Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union for the period May 1, 1990, through April 30, 1993, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act.

For the period May 1, 1990, through April 30, 1993, the Union has been, and is, the limited exclusive collective-bargaining representative of the unit.

On or about April 15, 1992, the Union and Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a modification and extension of the collective-bargaining agreement referred to above.

Since on or about July 17, 1992, the Union has requested that Respondent execute a written contract containing the agreement.

Since on or about July 17, 1992, Respondent, by Admiral R. Barber, has failed and refused to execute and abide by the agreement and has failed and refused to recognize the Union as the exclusive collective-bargaining representative of the unit.

## CONCLUSION OF LAW

By the acts and conduct described above, Respondent has failed and refused and is failing and refusing to bargain collectively with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to execute and abide by the agreement it reached with the Union on or about April 15, 1992, we shall order the Respondent to execute and abide by that agreement, and to make whole the unit employees for any losses resulting from its failure to do so, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1979), including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, A. R. Barber Masonry, Jacksonville, Florida, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing and refusing to execute and abide by the agreement it reached with the Union on or about April 15, 1992, and failing and refusing to recognize the Union as the limited exclusive representative of the unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of employees in the unit described below with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment:

All bricklayers, blocklayers, stonemasons, apprentices, and improvers.

(b) Execute and abide by the written contract containing the agreement it reached with the Union on or about April 15, 1992.

(c) Make whole the unit employees for any losses attributable to its failure to execute and abide by the agreement since July 17, 1992, as set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Jacksonville, Florida, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to execute and abide by the agreement reached with Bricklayers, Masons, Marble Masons, Tile Setters, Terrazo Workers, Pointers, Cleaners, and Caulkers Local Union No. 2 of Florida, I.U.B.A.C. on April 15, 1992, and WE WILL NOT fail and refuse to recognize the Union as the limited exclusive representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of employees in the unit described below with respect to wages, rates of pay,

hours of employment, and other terms and conditions of employment:

All bricklayers, blocklayers, stonemasons, apprentices, and improvers.

WE WILL execute and abide by the written contract containing the agreement reached with the Union on April 15, 1992.

WE WILL make whole the unit employees for any losses attributable to our failure to execute and abide by the agreement since July 17, 1992.

A. R. BARBER MASONRY